IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

OP.No. 12757 of 2003(R)

PETITIONER:

MAJEED N., NADUTHARAMMAL,
KODIYARA POST, KALLAYI (VIA), KOZHIKODE DISTRICT.

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS:
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1. **STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.**

2. **DIRECTOR, VOCATIONAL HIGHER SECONDARY EDUCATION, THIRUVANANTHAPURAM.**

3. **MANAGER, WYNAD ORPHANAGE VOCATIONAL HIGHER SECONDARY SCHOOL, MUTTIL P.O., WYNAD.**

BY GOVERNMENT PLEADER SMT.K.R.DEEPA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, ALONG WITH WPC NO. 11997 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.21757/2003 IN OP. NO. 12757/2003

DISMISSED

20.06.2007 **SD/- KURIAN JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER APPROVING APPOINTMENT OF PETITIONER.

EXT.P2:- COPY OF THE G.O.(MS) 125/91/G, EDN. DT. 12.8.91.

EXT.P3:- COPY OF THE G.O.(RT) NO.2069/ DT. 18.6.94.

EXT.P4:- COPY OF THE JUDGMENT IN OP.22800/99 DT. 9.11.99.

EXT.P5:- COPY OF THE JUDGMENT IN CCC. NO.842/2000 DT. 2.1.01.

EXT.P6:- COPY OF THE G.O.(RT) NO.2107/02/G.EDN. DT. 12.9.02.

EXT.P7:- COPY OF THE CERTIFICATE ISSUED TO ONE OF THE STUDENT.

/TRUE COPY/

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KURIAN JOSEPH J.

O.P. NO.12757/03 & W.P.(C) 11997/04

Dated 20th June, 2007.

J U D G M E N T

Petitioner is aggrieved since he is not granted the benefit of appointment with effect from the date of appointment. Ext.P1 in W.P.(C) No.11997/04 is the order appointing him as temporary teacher with effect from 11.8.1995. It is seen from Ext.P1 that the appointment was approved by the Director of Vocational Higher Secondary Education as per proceedings dated 7.12.1995. The petitioner, after working for four years, has resigned from service, it is submitted. The issue is whether the petitioner is entitled to the salary and other benefits flowing out of the service pursuant to the said appointment. The stand taken in the counter affidavit is that the course in Livestock Management was sanctioned in Wayanadu Orphanage Vocational Higher Secondary School during the academic year 1994-95, whereas the post was sanctioned only with effect from 12.9.2002 and that the period prior to the sanctioning of post cannot be regularised and the incumbent would be entitled only to daily wages. Once the course is sanctioned, why the teacher for the sanctioned course is

not appointed, is not clear from the counter affidavit and there is no satisfactory answer either. Being a sanctioned course in an aided institution, it is incumbent on the authority sanctioning the post to sanction the posts for the conduct of the course also. Apparently in that view of the matter only, pursuant to the directions issued by this Court in O.P.No.22800/99 (Ext.P4 in O.P.12757/03), wherein the petitioner also is a party, appointment of the second petitioner therein, viz., M.E.Faisal as Peon was sanctioned with effect from the date of his appointment. It appears the petitioner herein took up the matter in contempt leading to Ext.P5 judgment in C.C.C.842/2000, which was closed on the undertaking that steps were being taken to sanction the post. That judgment is dated 2.1.2001. Far later, the Government passed order dated 12.9.2002, which is impugned in O.P.No.12757/03 sanctioning the post only prospectively. In the counter affidavit filed in the said original petition, it is admitted that the course was sanctioned for the academic year 1994-95. It is also stated that “Considering the fact that the petitioner and similarly placed others performed duty for the smooth functioning of the course sanctioned, Government have permitted to treat them as on daily wages so as to effect payment for their work

which they actually performed." If as a matter of fact, the course was sanctioned and if as a matter of fact the petitioner admittedly performed the duties for the smooth functioning of the course sanctioned by the Government, and taking note also of the fact that in the case of Peon, the post was sanctioned prior to 12.9.2002, I do not find any justification in taking a discriminatory stand in the case of the petitioner. I quash the impugned orders. The petitioner shall be treated to have been duly appointed as per the terms of appointment, Ext.P1 in W.P.(C)11997/04, which was approved by the Director of Vocational Higher Secondary Education.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J.

O.P. NO.12757/03 & W.P.(C) 11997/04

J U D G M E N T

Dated 20th June, 2007.